

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Attorney Docket No.: **KBI-0015**

Inventors: **Natarajan Ranganathan**

Serial No.: **10/689,359**

Filing Date: **October 20, 2003**

Examiner: **Ruth A. Davis**

Customer No.: **26259**

Group Art Unit: **1651**

Confirmation No.: **4537**

Title: **Nutritional Compositions Comprising Probiotics**

Electronically Submitted via EFS-Web

Date: **July 3, 2008**

I hereby certify that this paper is being electronically submitted on the date indicated above to the Commissioner for Patents, U.S. Patent & Trademark Office (AF).

By *Jane Massey Licata*
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Commissioner for Patents
U.S. Patent & Trademark Office
(AF)

REPLY BRIEF

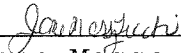
This is in response to the Examiner's Answer dated May 9, 2008, which raised certain issues that Appellant wishes to address.

In the sentence spanning pages 9 and 10 of the Examiner's Answer, it is suggested that "Paul clearly details the claimed probiotics, prebiotics, carbohydrates, fats and proteins that are included in the composition for maintaining and improving GI health" [emphasis added]. However, Appellant respectfully submits that this is a mischaracterization of the teachings of Paul. The paragraph spanning columns 3 and 4 of Paul clearly indicates that the composition for maintaining GI health is composed of two essential elements: (a) an immunoglobulin composition comprising concentrated immunologically active immunoglobulins, and (b) soluble dietary fiber. Paul further indicates that the composition for maintaining GI health "can optionally contain about 0 to about 20% by weight of a beneficial human intestinal microorganism" [emphasis added], wherein the immunoglobulin composition of (a) "can also include a carrier ... selected from the group consisting of a carbohydrate and a lipid" [emphasis added]. See column 4, lines 2-6, and column 4, lines 30-33. In so far as Paul's composition for maintaining and improving GI health *can optionally* contain beneficial human intestinal microorganisms and the immunoglobulin component *can optionally* contain lipids, it is clear that Paul does not consider a high titer of viable probiotic bacteria or a fat ingredient as critical variables for achieving the intended result of restoring or maintaining gastrointestinal health. Thus, Appellant respectfully submits that the Examiner's assertion that it would have been obvious to make the claimed combination for maintaining or enhancing gastrointestinal health based primarily on the teachings of Paul is unfounded.

Furthermore, Appellant notes that the Examiner acknowledges that "the supporting references do not teach the claimed water activity." See page 11 of the Answer. Yet, this rejection has been

maintained based upon Paul's mere suggestion of a liquid to dry powdered composition. However, again, Paul does not indicate the criticality of water activity nor does Paul suggest a range of water activity which encompasses that presently claimed. Likewise, the secondary references fail to provide any hint of the criticality of water activity in a composition for maintaining or enhancing gastrointestinal health. Thus, the cited references simply fall short of supporting this rejection under 35 U.S.C. 103(a). This rejection therefore should be withdrawn.

Respectfully submitted,



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DATE: July 3, 2008

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